

RECEIVED
CENTRAL FAX CENTER

SEP 01 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

ATTY. DOCKET NO.: FR920010024US1

IN RE APPLICATION OF:

DAVID PEREZ CORRAL, ET AL.

SERIAL No.: 09/942,512

FILED: 29 AUGUST 2001

FOR: METHOD AND SYSTEM FOR A
QUALITY SOFTWARE
MANAGEMENT PROCESS§
§
§
§
§
§
§
§
§
§
§

EXAMINER: MARY J. STEELMAN

ART UNIT: 2191

APPEAL BRIEF UNDER 37 C.F.R. 41.37RECEIVED
OICE/IAPMail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

SEP 02 2005

Sir:

This Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 1, 3-15, 17 and 18 in the above-identified application. A Notice of Appeal was filed in this case on July 6, 2005 and received in the United States Patent and Trademark Office on July 6, 2005. Please charge the fee of \$500.00 due under 37 C.F.R. §1.17(c) for filing the brief, as well as any additional required fees, to Deposit Account No. 09-0457.

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(A)]

I hereby certify that this correspondence is being:

☒ deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.☐ transmitted by facsimile on the date shown below to the U.S. Patent and Trademark Office at (571) 273-8300.

SEPT. 01, 2005

Date

Shenise Ramdeen

Shenise Ramdeen

09/02/2005 SSESHE1 00000077 090457 09942512

01 FC:1402 500.00 DA

Atty. Dkt. No. FR920010024US1

Appeal Brief
Page 1

Serial No.: 09/942,512

DILLON & YUDELL LLP
ATTORNEYS AT LAW

RECEIVED
CENTRAL FAX CENTER

SEP 01 2005

USPTO FACSIMILE TRANSMITTAL SHEET

TO:	FROM:	
Examiner Mary J. Steelman	James E. Boice, Reg. No. 44,545	
ORGANIZATION:	DATE:	
US Patent and Trademark Office	September 1, 2005	
ART UNIT:	CONFIRMATION NO.:	TOTAL NO. OF PAGES INCLUDING COVER:
2191		14
FAX NUMBER:	APPLICATION SERIAL NO.:	
571-273-8300	09/942,512	
ENCLOSED:	ATTORNEY DOCKET NO.:	
Appeal Brief	FR920010024US1	

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

This fax from the law firm of Dillon & Yudell LLP contains information that is confidential or privileged, or both. This information is intended only for the use of the individual or entity named on this fax cover letter. Any disclosure, copying, distribution or use of this information by any person other than the intended recipient is prohibited. If you have received this fax in error, please notify us by telephone immediately at 512.343.6116 so that we can arrange for the retrieval of the transmitted documents at no cost to you.

8911 N. CAPITAL OF TEXAS HWY., SUITE 2110, AUSTIN, TEXAS 78759
512.343.6116 (V) • 512.343.6446 (F) • DILLONYUDELL.COM

REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 012146, frame 0454.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1, 3-15, 17 and 18 stand finally rejected by the Examiner as noted in the Final Office Action dated April 8, 2005. Claims 2 and 16 have been cancelled. The rejection of Claims 1, 3-15, 17 and 18 is appealed.

STATUS OF AMENDMENTS

No amendments to the claims have been made subsequent to the Final Action from which this Appeal is filed.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention is a computer implemented method for operating a quality plan in a product development environment. The method includes defining a set of quality processes, which include, *inter alia*, evaluating a contribution of a member of an organization based on a difficulty of a software project, including the complexity of software timing in the software project (*see page 66-67 of the present specification for support of Dependent Claim 3*). The method also includes the step of classifying a document and assigning a document review workflow to the document according to whether an originator of the document is a member of the organization (*see page 37-38 of the present specification for support of Dependent Claim 11*). If there is a defect in software, a determination is made, *inter alia*, as to whether the defect was caused by a miscommunication between members of a software development team, a

software transcription error, or inadequate training of the members of the software development team (*see page 86 of the present specification for support for Dependent Claim 18*). The method is based on a detailed process, claimed in independent Claim 1, which comprises a headlight report that includes identifying potential catastrophes associated with a project (*see pages 31-32 of the present specification for support of Independent Claim 1*).

Thus, as recited by Appellants' Claims 3, 11, 18 and 1, Appellants' invention provides a computer implemented method for operating a quality plan in a product development organization. The method comprises the following elements:

- (1) a survey process to evaluate a contribution of a member of the organization to a quality plan, wherein the evaluation of the contribution of the member is based on a difficulty of a software project, and wherein the difficulty of the software project is based on a software timing, whether pre-existing documentation exists for the project, a scope of use of software being developed by the software project, a complexity of the software, and a number of interfaces being used by the software (*Dependent Claim 3*);
- (2) classifying a document and assigning a document review workflow to the document according to whether an originator of the document is a member of the organization (*Dependent Claim 11*);
- (3) determining a cause of a defect in a software...by determining if one or more events occurred, the one or more events being from a group of events that includes a miscommunication between members of a software development team, a software transcription error, and inadequate training of the members of the software development team (*Dependent Claim 18*); and
- (4) defining a headlight report including...potential catastrophes associated with the project (*Independent Claim 1*).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. The Examiner's rejection of Claim 3 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – "*Morgan*") in view of

Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”), and further in view of Minkiewicz et al. (U.S. Patent No. 6,073,107 – “*Minkiewicz*”) is to be reviewed on Appeal.

- B. The Examiner’s rejections of Claims 11-12 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – “*Morgan*”) in view of Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”), and further in view of Summerlin et al. (U.S. Patent No. 6,555,365 – “*Summerlin*”) is to be reviewed on Appeal.
- C. The Examiner’s rejection of Claim 18 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – “*Morgan*”) in view of Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”) is to be reviewed on Appeal.
- D. The Examiner’s rejection of Claims 1, 4-10, 13-15 and 17 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – “*Morgan*”) in view of Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”) is to be reviewed on Appeal.

ARGUMENT

- A. The Examiner’s rejection of Claim 3 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – “*Morgan*”) in view of Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”), and further in view of Minkiewicz et al. (U.S. Patent No. 6,073,107 – “*Minkiewicz*”).

The Examiner’s rejection of Claims 3 under 35 U.S.C. §103(a) as being unpatentable over the combination of *Morgan* in view of *Reed*, and further in view of *Minkiewicz* is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

The cited art does not teach or suggest “evaluating the contribution of a member of an organization, wherein the evaluation...is based on a difficulty of a software project, and wherein the difficulty of the software project is based on a software timing.” On page 18 of the April 8, 2005 final Office Action, the Examiner equates “production rate” with “software timing.” “Software timing” is patentably distinct from “production rate.” That is, software timing is

determined by timing signals that coordinate activities within a computer system. This concept is properly supported in Table 35 on page 67 of the present specification, and the term "software timing" is well understood by those skilled in the art of programming. "Production rate," on the other hand, is a well understood concept of how long it takes to product a good, service or like product.

B. The Examiner's rejections of Claims 11-12 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – "*Morgan*") in view of Reed et al. (U.S. Patent No. 6,088,717 – "*Reed*"), and further in view of Summerlin et al. (U.S. Patent No. 6,555,365 – "*Summerlin*").

The Examiner's rejections of Claims 11-12 under 35 U.S.C. §103(a) as being unpatentable over the combination of *Morgan* in view of *Reed*, and further in view of *Summerlin* is improper since the combined art does not teach or suggest all of the limitations found in the subject claims.

With reference to exemplary Claim 11, the cited prior art does not teach or suggest "classifying a document and assigning a document review workflow to the document according to whether an originator of the document is a member of the organization." *Morgan* is cited at Col. 5, lines 28-31 for teaching "activity names or codes are collected in a master activity dictionary (classifying a document), which functions as a glossary of activities for all sites...", and at Col. 5, line 64 – Col. 6, line 5 for teaching "people mapping" that includes "management organization." *Summerlin* is cited for the teaching (col. 1, lines 8-11) that records can be classified as "evidence of the conduct of business processes." Thus, the Examiner appears to take the position that since records can be classified, and since people can be classified, then records can be classified according to the person who wrote it. Applicants dispute that the prior art suggests such a combination without the teachings of the present specification, which is not available as a "template" under *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1984). Furthermore, neither cited prior art teaches or suggests "assigning a document review workflow to the document according to whether the originator of the document is a member of the organization." That is, the cited art makes no reference or suggestion at all of "assigning a document review

workflow” in any form or with any guidelines, and particularly without reference to the originator of the document being a member of a specific organization.

C. The Examiner’s rejection of Claim 18 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – “*Morgan*”) in view of Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”).

The Examiner’s rejection of Claim 18 under 35 U.S.C. §103(a) as being unpatentable over the combination of *Morgan* in view of *Reed* is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

The cited prior art does not teach or suggest “determining a cause of a defect...by determining if one or more events occurred, the one or more events being from a group of events that includes a miscommunication between members of a software development team, a software transcription error, and inadequate training of the members of the software development team. (See Page 86 of the present Specification.) The Examiner states that “*Morgan* broadly disclosed that ‘the cause of a defect’ is mapped to events related to a group of event” (page 16 of the April 8, 2005 final office action, emphasis added), and appears to equate network surveillance, network testing, technical assistance, vendor interaction, configuration changes, and particularly “problem resolution” (cited in *Morgan*) as suggesting “miscommunication between members of a software development team, a software transcription error, and inadequate training of the members of the software development team.” There is no suggestion in the cited art of all of the elements in rejected Claim 18. To suggest that a term such as “problem resolution” of *Morgan*’s general business operations covers all of these specifically claimed and recited programming problems is contrary to Section 706.02(j) of the MPEP.

D. The Examiner’s rejection of Claims 1, 4-10, 13-15 and 17 under 35 U.S.C. §103(a) as being unpatentable over the combination of Morgan et al. (U.S. Patent No. 5,799,286 – “*Morgan*”) in view of Reed et al. (U.S. Patent No. 6,088,717 – “*Reed*”).

The Examiner's rejection of Claims 1, 4-10, 13-15 and 17 under 35 U.S.C. §103(a) as being unpatentable over the combination of *Morgan* in view of *Reed* is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

Neither *Morgan* nor *Reed* teach or suggest all of the claimed features found in exemplary Claim 1, from which Claims 4-10, 13-15 and 17 directly or indirectly depend. For example, the cited prior art does not teach or suggest a "headlight report including...potential catastrophes associated with the project." (See Pages 31-32 of the present Specification.) The Examiner cites *Morgan*, col. 4, lines 5-11, which teaches "an on-line reporting feature 50, which may generate predefined or user-defined reports on a periodic basis or on demand. Examples of the many types of reports available may include trend, forecast, benchmark, site comparison, standard service, activity output, matrix, quality, and value-added reports." There is no teaching or suggestion of potential catastrophes associated with the project.

The Examiner's position appears to be that since *Morgan* teaches that reports can be "user defined," then they could be directed to "potential catastrophes associated with a project." The Examiner repeatedly states that "Morgan broadly disclosed..." Applicants point out that "broadest reasonable interpretation" applies to the scope of the pending claim, not the scope of the prior art (MPEP § 2111). The prior art must teach or suggest all the claim limitations (MPEP § 706.02(j)). Neither *Morgan* nor any of the other cited art suggests a report in which "potential catastrophes" are associated with a project for a report.

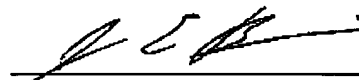
Morgan also fails under *ejusdem generic*, the well understood rule of construction that states that, where general words follow enumerations of particular classes, the general words shall be construed as applicable only to things of the same general nature or kind as those enumerated (citations omitted). The types of reports available according to *Morgan* are "trend, forecast, benchmark, site comparison, standard service, activity output, matrix, quality, and value-added reports." To consider "potential catastrophes" as being the same as the enumerated examples exceeds the boundaries of their meanings.

With the above arguments, Appellants have clearly shown why Appellants' claimed invention is not suggested by any of the above combination of references and pointed out the deficiencies in Examiner's rejections. All of the above rejections are therefore not well founded and should be reversed.

CONCLUSION

Appellants have pointed out with specificity the manifest error in the Examiner's rejections, and the claim language that renders the invention patentable over the combination of references. Appellants, therefore, respectfully request that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



James E. Boice
Reg. No. 44,545
DILLON & YUDELL LLP
8911 N. Capital of Texas Highway
Suite 2110
Austin, Texas 78759
512-343-6116

ATTORNEY FOR APPELLANTS

CLAIMS APPENDIX

1. A computer implemented method for operating a quality plan in a product development organization comprising a plurality of members and having quality objectives for product development projects, the method analyzing a quality metrics report, and comprising the steps of:

defining a set of quality processes adapted to quality objectives required by an organization, wherein the set of quality processes includes:

a tracking process for identifying an issue in the product development projects, the tracking process being an internal project management tracking process that reports a status of current risks according to a priority of a risk issue and a target date for resolution of the risk issue;

a meeting set-up and reporting process for preparing and conducting meetings among a plurality of members of the organization;

a daily headlights reporting process for providing communications among members of the organization, wherein the daily headlights reporting process includes a headlight report being generated by a team leader, the headlight report including achievements of a day, changes to a project plan, assistance needed for a project, and potential catastrophes associated with the project, and wherein a quality management office consolidates the headlight reports daily into a single executive report, and wherein issue records are created daily from the consolidated headlight reports to initiate corrective actions to the project, and wherein the executive reports are consolidated weekly into a summary report;

a documentation process for reviewing and accepting documents generated by the product development projects;

an inspection process for determining deliverables generated by the product development projects to be reworked; and

a metrics process for producing metrics for the data relative to the product development projects;

defining a set of computer implemented quality tools to collect data relative to product development projects, said quality tools comprising at least one database to store said collected data;

for each quality process, aggregating a set of the stored data to generate a respective quality report;

analyzing each quality report to detect problems in the product development projects; and

using results of the analyzing step to initiate actions to resolve the problems detected, thereby improving quality of the product development projects.

2. (cancelled)

3. The method of claim 1, further comprising a survey process to evaluate a contribution of a member of the organization to a quality plan, wherein the evaluation of the contribution of the member is based on a difficulty of a software project, and wherein the difficulty of the software project is based on a software timing, whether pre-existing documentation exists for the project, a scope of use of software being developed by the software project, a complexity of the software, and a number of interfaces being used by the software.

4. The method of claim 1, wherein the tracking process further comprises the steps of:
recording the identified issue within an issue storing area of the at least one database;
assigning to the issue priority, a resolution target date, and an organization member responsible; and
communicating to members of the organization actions taken to resolve the issue item.

5. The method of claim 4, wherein the recorded issue comprises a field for indicating an open date, an issue identifier, a description of the issue, and an open status.

6. The method of claim 5, further comprising the step of updating the open status field to a close status for a resolved issue in the at least one database.

7. The method of claim 1, wherein the meeting set-up and reporting process further comprises the steps of:

creating a meeting record in a meeting storing area of the at least one database, the meeting record comprising a meeting date, a meeting place, a meeting attendee, and a meeting agenda;

sending an invitation to the meeting attendee; and sending a meeting report after completion of the meeting to receivers.

8. The method of claim 7, further comprising the step of storing the meeting report in a reports storing area of the at least one database.

9. The method of claim 1, wherein the daily headlights reporting process further comprises the steps of:

generating headlight reports having headlights data;

consolidating at a first predetermined frequency the headlights reports into a single executive report to be distributed to an executive distribution list;

recording issue items in an issue memory area based on data of the executive report; and

generating at a second predetermined frequency a headlight summary based on the executive reports.

10. The method of claim 9, further comprising the steps of storing the executive report and the headlight summary in a reports memory area of the at least one database.

11. The method of claim 1, wherein the documentation process further comprises the steps of:

classifying a document and assigning a document review workflow to the document according to whether an originator of the document is a member of the organization; and

creating a document record in a document memory area of the at least one database.

12. The method of claim 11, wherein the document is a technical document associated with a software product.

13. The method of claim 1, wherein the inspection process further comprises the step of:
creating an inspection record in an inspection memory area of the at least one database, the inspection record comprising an open date, an inspection record identifier, a priority, a description of a deliverable, and a target date to complete the inspection process.
14. The method of claim 1, wherein the metrics process further comprises the steps of:
recording the quality metrics report in a metrics memory area of the at least one database.
15. The method of claim 1, wherein the metrics further comprise product metrics.
16. (cancelled)
17. The method of claim 1, wherein the using results step further comprises the step of creating at least one quality action record in a quality actions memory area of the at least one database, the at least one quality action record comprising:
an open date,
a quality action identifier,
a priority,
a description of a quality, action, and
a target date to operate the quality action.
18. The method of claim 1, further comprising:
determining a cause of a defect in a software being created by the product development organization, wherein the determining step is performed by determining if one or more events occurred, the one or more events being from a group of events that includes a miscommunication between members of a software development team, a software transcription error, and inadequate training of the members of the software development team.

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.